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09/940,730	08/28/2001	Alexander Thomas Ashcroft	C7564(V)	5138

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EXAMINER

MARKOFF, ALEXANDER

ART UNIT

PAPER NUMBER

1746

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/940,730

Applicant(s)

ASHCROFT ET AL.

Examiner

Alexander Markoff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37,39-43 and 45-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37,39-43 and 45-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. It is noted that the instant claims are directed to distinct inventions, which can be properly restricted.

No restriction requirement is made this time because the same prior art is applied to reject claims directed to the different inventions.

It is also noted that some of the claims are not proper for the US Patent practice.

It is further noted that if the claims would be amended to put a serious burden on the examiner to examine all the inventions a restriction and/or election of species can be required.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

3. The absence of drawings is objected to under 37 CFR 1.83(a) because they fail to show a dispenser and a wipe as described in the specification and recited by claims. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 14-32 provide for the use of an antioxidant, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 14-32 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

7. Claims 2, 4-12, 37, and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 2: the term "fatty soil" is indefinite and relative term.

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As to claim 4: the term "diluted form" is a relative term.

As to claims 5, 37: is not clear what is referenced as a "natural" antioxidant.

As to claims 6-12: the substructure recited by claim 6 is not a proper chemical structure. It is not clear what is referenced by the formula.

As to claims 8-11 it is noted that the specifically recited substructures and antioxidants could not be described by the formula of claim 6.

As to claim 39: this claim is indefinite because it depends on claim 38, which has been canceled.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 43, and 49-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Connor et al (US Patent NO 6,395,701).

Connor et al teach a composition comprising the claimed ingredients, the claimed pH, the claimed concentration ranges, and the claimed applications.

They also teach wipes comprising the composition. See entire document, especially column 49-50, 69, 79-95.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 1-13, 33-37, 39-42 and 45-48 rejected under 35 U.S.C. 103(a) as being unpatentable over Connor et al.

As to claims 1-13: Connor et al do not specifically teach the sequence of the claimed steps. However. They teach application of the disclosed composition for dishwashing, surface cleaning, laundry, personal care, etc.

It would have been obvious to an ordinary artisan at the time the invention was made that dishes, surfaces, fabrics, skin are repeatedly cleaned, accordingly, it would have been obvious to an ordinary artisan at the time the invention was made that such repeated application of the composition of Connor et al would provide the claimed sequence.

As to claims 33-37 and 39-42: Connor et al do not explicitly teach that the viscosity of the composition is in the claimed range. However, they teach the composition in the form of liquids of the different viscosity up to gels. They also teach the use of thickeners and viscosity modifiers, including the claimed ones. It would have been obvious to an ordinary artisan at the time the invention was made that at least some of the composition disclosed by Connor et al would have the viscosity in the claimed range.

It would also have been obvious to find an optimum viscosity of the composition depending from the application requirements because Connor et al teach viscosity as a result effective variable.

As to claims 45-48: Connor et al do not specifically teach the composition in the container with a spray means.

However, it is the examiner's position that the containers with spray trigger means are notoriously well known for dispensing surface cleaners, personal care

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products, etc. It would have been obvious to an ordinary artisan at the time the invention was made to provide at least cleaning and personal care compositions of Connor et al in the containers, which are the most conventional for application of such composition with reasonable expectation of adequate results in order to provide the composition in the package ready for use.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 4,238,345; 4,243,543; 4,526,701; 5,622,646; 5,853,430; 6,235,699; and 6,372,703 are cited to show that the use of antioxidants in different cleaning compositions and methods was conventional.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 703-308-7545. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P Gulakowski can be reached on 703-308-4333.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703--308-0651.



Alexander Markoff
Primary Examiner
Art Unit 1746

am

ALEXANDER MARKOFF
PRIMARY EXAMINER